Technical notes/questions on new reg language 10.31.2025

Submitted by Alex Holt:

Thanks to the Department for all of its hard work on the new regulatory drafts. These questions and notes are being sent ahead of time with the hope of speeding up the negotiations next week. Besides the outstanding issues around the definition of professional student, these are my outstanding questions and concerns that have not been expressed by other negotiators in previous proposals.

685.102

(b) Expected time to credential (1)

The definition for expected time to credential, which comes into play for the phase-in of new loan limits, reads in (1) as "three academic years, or its equivalent." I am looking for clarification as to what the "equivalent" of an academic year would be for institutions (and confirmation that the Department does not intend to account for, e.g., the full-time equivalent of an academic year for a student who is enrolled less-than-full-time). Perhaps the "or its equivalent" language could be struck, or cross-referenced as the definition of an academic year in 34 CFR 668.3.

685.203

(e)(4)(i)

I think it should possibly be changed to "at ~~that~~ an institution". I don't think it makes sense to be specific to one institution.

(f)(2)(ii)(B) and (g)(3)(ii)

As written, the language creates a lot of problems for parents with undergraduate students who are undeclared, because switching into a declared major could be construed as meaning the student had switched their "program of study". While the statute specifically uses the language "program of study" it's hard to believe, in the context of the bill, that Congress meant to punish undeclared majors. In this case, it's more likely that Congress meant "program of study" at the undergraduate level to mean something like credential level, such as bachelor's degree, at that institution.

The best way to fix this is to strike "in a program of study." The second best way would be to define "program of study" within these two subsections to mean "degree type," or to rephrase "program of study" as "credential level."

(l)

Point of clarification: If a course in a dual degree program is tagged as both graduate and professional (in the sense that it satisfies the requirements for both degrees) would the schools count that class towards professional in the numerator for purposes of the 50 percent calculation? If a dual degree program (such as a MPH-MD program) operates such that a student enrolls in a professional program, takes one year in the

program completing a graduate (non-professional) degree, and then resumes professional studies, what limits will apply to the student in each year of their program?

685.208

(b)(8) and (c)

The new Tiered Standard repayment plan does not currently have a minimum monthly payment. This is inadvisable from an operational standpoint (except for the last month, where a balance may be less than the minimum monthly payment). The Department should state a minimum, and that minimum should be $10.

There is currently no minimum monthly payment for standard repayment plans specified in statute, either; the $50 minimum is from regulation. A $50 minimum for the new tiered standard repayment plan would be counter to Congressional intent and not rooted in statute. Congress clearly intended to simplify the loan repayment system as much as possible by only offering two plans, and it having two different minimum monthly payments for each plan would not be “simple” to borrowers. Furthermore, given that Congress elongated the standard monthly plan in order to lower monthly payments for higher debt borrowers, it would be confusing that Congress at the same time would have wanted that same standard plan’s minimum monthly payment to be 500% higher than the one set in RAP.

To be clear, I am *not necessarily* arguing that ED should change the minimum monthly payment in *existing* repayment plans, as I am sympathetic to ED’s argument that OBBBA does not give explicit instructions to re-regulate those plans. However, ED clearly needs to create regulations for the new tiered standard plans, a monthly minimum is an operational necessity, and, absent any other statutory guidance, ED should use the RAP monthly minimum as the best basis for comparison and set $10 as the minimum monthly payment in the new tiered standard as well.

685.209

(k)(8)(5)

OBBBA clearly intends for payments in REPAYE to count towards forgiveness. However, the language in this section only mentions the PAYE or ICR plan. I understand that REPAYE is under litigation so ED doesn’t want to touch it. Therefore ED should not mention the plan, but rather the authority. So ED could say, for example, "a monthly payment under an ~~the PAYE, or~~ ICR plan under this section.”